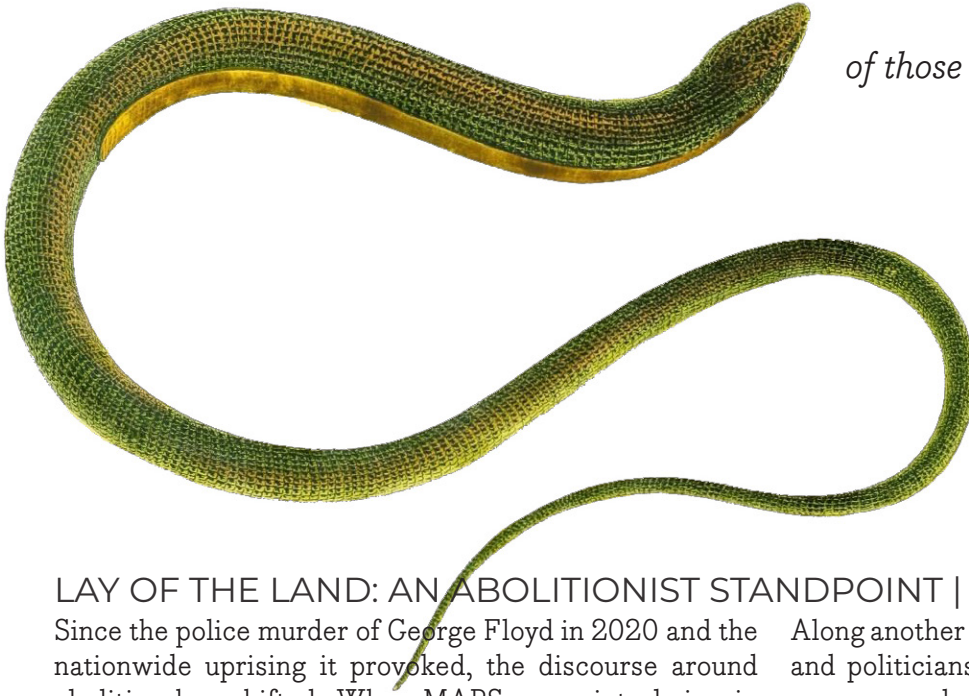


# THE OPENING STATEMENT

*of those who are supposed to remain silent*

SUMMER 2023 | ISSUE 17



## LAY OF THE LAND: AN ABOLITIONIST STANDPOINT | MAPS

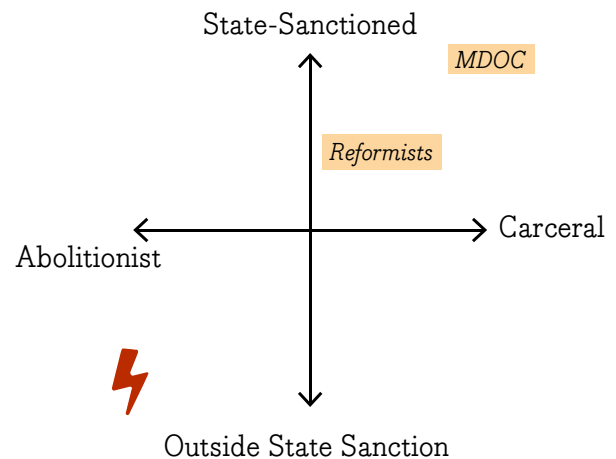
Since the police murder of George Floyd in 2020 and the nationwide uprising it provoked, the discourse around abolition has shifted. When MAPS came into being in 2016, those of us committed to police and prison abolition were a passionate and smallish crowd, always excited to cross paths with likeminded people. Before 2020, most people had never heard of the contemporary abolition movement. Over the last three years, though, abolition has become a standard leftist position that has gotten the kind of mainstream media coverage we never could have imagined just a few years ago. We think it might be time to clarify again (or for the first time, for our newer readers) what MAPS stands for.

Don't misunderstand that if you disagree with something here it means you're outside our circle. We're interested in stimulating dialogue about these ideas, not unanimity. Movements need to move, not stand still, and we need to hear each other's voices to grow and light the path forward.

MAPS stands for Michigan Abolition and Prisoner Solidarity. What do we mean by abolition, and by prisoner solidarity? One way to map out what we do, and do not, represent is to take a look at other groups organizing around prisoner issues in Michigan. At one end of the spectrum are those committed to abolishing all forms of incarceration; at the other end are those committed to mass imprisonment, to caging and confining human beings.

Along another dimension, the MDOC and related agencies and politicians are the state itself. Other organizations are more or less state-sanctioned or work in cooperation with the state. A smaller number, including MAPS, intentionally remain outside the circle of entities which the state accepts and collaborates with.

If you're a visual kind of person, you might imagine the landscape something like this:



See MDOC at the upper right corner? They are the epitome of state-sanctioned carcerality in our state. See the lightning bolt at the lower left corner? That's MAPS! Abolitionist, against state oppression and outside of state structures.

Of course, this crude plot is an oversimplification. There are groups and individuals scattered across the landscape, groups might change strategy and practices over time and across contexts, and there are more dimensions than just an X and Y axis.

Still, we find it a helpful diagram because we've noticed a pattern in this state. A lot of the groups that do prison-related work cluster towards the upper center. That is, they tend to work towards reforming carceral systems to make them a little less unjust, incrementally less harmful. In the course of that work, they may be glad to work with state agencies and politicians, and vice versa. They might be pursuing state or federal funds to achieve their goals. There are diverse viewpoints between and within these groups, but for the sake of argument, let's call them the reformists.

Here at MAPS, we believe it's important to hold down that lower-left corner. Here are some reasons why.

### ABOLITION, REFORM, AND NON-REFORMIST REFORMS

Most people who are paying attention agree there are a multitude of problems with the carceral system, so we don't need to argue that. For abolitionists, our political analysis diverges from that of the many groups seeking incremental reforms. For one thing, we don't believe that *mass* incarceration is the problem. As abolitionist and Black studies scholar Dylan Rodríguez has argued, this term "reframes carceral domestic war in liberal reformist terms as a compendium of discrete, mistaken excesses of state power that largely derive from criminological error, electoral opportunism, and vague 'moral' failure."<sup>1</sup> We don't think the prison population just needs to be reduced to a more acceptable size, so it will cost less or be more manageable or cause a little less harm. Instead, we believe putting people in cages is wrong and intolerable, period.

We also don't believe that the criminal justice system is dysfunctional and needs to be made more just, fair, and smooth running. Instead, we see that the system is working just as intended—as a central pillar of racial capitalism. Racism and all other kinds of oppression in the system are not flaws, they are features. This system was and is designed to maintain neo-colonialism, class divisions, cisheteropatriarchy, and racism; keep Black and Brown and poor neighborhoods oppressed; and prop up the crumbling structures and contradictions of late-

stage capitalism. Low-income disabled, neurodivergent, and LGBTQI2+ people are singled out for special hells in this carceral system, and that is also by design. These systems of oppression are historically interconnected, and can never be fully understood in isolation.

One predictable reaction to our argument goes like this: "But we need prisons, because they are the only way to deter and punish violent criminals. Mass murderers and pedophiles really should be in prison." We get where it comes from, but we take a different view. When you step back and look at violence historically, both the science and the lived knowledge of the most impacted communities say the exact opposite. For one thing, the carceral system itself is a site of extreme violence of all kinds. In this sense, incarceration can only move violence, not solve it. For another, it increases violence across the spectrum of society—especially in poor and Black and Brown communities—by justifying police abuse, depriving families of their loved ones, and blocking people returning to the outside from accessing basic needs like housing, sustenance, healthcare, and respect. And of course, there are loads of mass murderers, rapists, and pedophiles running around freely as things stand, many of them politicians, priests, cops, bosses, and celebrities.

Arguments against abolition fall apart like this on closer examination. The purpose of this article isn't to dismantle them all (which has been ably done by many others, including authors in other issues of [The Opening Statement](#)). Our purpose is to explain a little of what we stand for, and why.

Does being abolitionist mean we don't support any reforms to policing, courts, or prisons? No. We definitely support moves that give those of you inside immediate relief from the horrific conditions of confinement in the MDOC, in particular. Over the years, MAPS has helped amplify concerns raised by folks inside about issues like atrocious food, inflated prices, low wages, sexual harassment and abuse, transphobia, retaliation, lack of healthcare, censorship, solitary confinement, pandemic conditions, and many more. So how is that any different from the reformists?

Before pushing for a reform, we try to consider a set of principles important to us as a group. First, we consider whether the changes proposed give more life to the carceral system, or chip away at it. For example, does the reform increase funding for MDOC that can be used to hire more staff, raise salaries, guinea-pig novel technologies, or build infrastructure? Then it's giving more blood to a vampire. Or, does the reform undermine MDOC's

<sup>1</sup> If you want to read the chapter that this quote comes from, hit us up and we'll mail you a scan of Rodríguez's "'Mass Incarceration' as Misnomer: Domestic War and the Narratives of Carceral Reform."

rationale for more staff, budgets, and buildings, thereby halting future growth and chipping away at the existing system? Does the reform further burden family members and communities with new fees and rules, or does it channel funds to community-based and community-owned resources? Does the reform buy into the state and mainstream media narrative that prisons “make society safe”? Or does it lay bare how prisons are the origin of spiraling violence? Does the reform make prisons work better and run smoother, or does it underscore how dysfunctional prisons are now and will always be? Does the reform promise freedom or early release for some prisoners, but only by reinforcing divisions between so-called “non-violent” and “violent” criminals? “Good” (“legal”) versus “bad” (“illegal”) immigrants?

You get the idea. If a reform helps to “shrink and starve” the carceral system, then it could be a reform that MAPS can get behind. Some organizers call these “non-reformist reforms,” because they serve a larger strategy that moves toward prison abolition, while simultaneously working to bring relief to folks inside. We might even collaborate with reformists on projects like these. Sometimes it can be to everybody’s advantage to engage in a broader terrain of struggle to address the same condition of confinement.

Unfortunately, groups that are not committed to abolition too often line up behind reforms that actually:

- expand funding to prisons (for example, in the name of increasing personnel, training, or programs)
- do not challenge the notion that prisons make us safe (and instead fall in line with tired tropes like “a well-functioning prison system keeps us all safer”)
- expand MDOC’s access to tools, tactics, and technology (for example, putting trackers on all inmates, and other e-carceration tactics that expand surveillance and shift even more costs of incarceration onto the incarcerated and their families)
- perpetuate the scope and scale of prisons (by promoting the building of new facilities, while failing to underscore the illegitimacy of institutions born out of racial capitalism and slavery)
- generally strive to make prisons run more smoothly, like a well-oiled death machine.

Those kinds of “reformist reforms” are regressive, effectively rationalizing and preserving the carceral system. Though they claim to help, and even if they do in fact help some individuals, they often make the general

situation worse and further entrench the carceral regime.

Even when reformists take up a “non-reformist reform,” they seldom acknowledge that diverse strategies can be used in complementary ways. Historically, there has been a tendency for such groups to scoop or appropriate an issue that abolitionists or folks inside have brought to the public, and then water down or de-fang those strategies that directly challenge prisons and the state. Now that abolition has gained more currency, they may even intentionally confuse the issues to get more people on board with their reforms. This is co-optation and counterinsurgency.

To illustrate how these frictions play out, let’s take the example of gender violence, which includes intimate partner violence, rape, and sex trafficking. Reformists seldom see outside the box of carceral feminism. Carceral feminism refers to mainstream, mostly white feminists who co-opted movements against gender violence that emerged from earlier, more radical anti-racist movements. Thanks to carceral feminism, we see so-called “progressive” prosecutors who on the one hand make campaign promises to reduce mass incarceration, while on the other feel emboldened to hammer defendants accused of gender violence. Thanks to carceral feminism, we see legislation like the Violence Against Women Act (pushed by Biden in the early 1990s) which poured 85% of its billions of dollars into the carceral system. Moreover, VAWA initially required states to implement mandatory arrest policies at scenes of domestic violence in order to receive VAWA-based funding. Though this requirement has relaxed in the 30 years since VAWA passed, this piece of legislation still channels about \$268 million into criminal legal responses to intimate partner violence. So after 30 years, rates of intimate partner violence have not even declined as much as crime rates overall. In other words, the massive investment in carcerality that VAWA represents did nothing to deter or decrease intimate partner violence, while it built systems that actually disempower and harm many survivors of gender violence.

For decades, groups like Incite! and others, often led by Black and Brown women, have been creating and advocating for non-carceral strategies that actually transform the roots of gender violence while better meeting the needs of survivors. The carceral system instead worsens those same root causes. MAPS stands in solidarity with those building viable alternatives to the harms of carceral feminism.<sup>2</sup>

A second example of how these dynamics can play out is the attempted expansion of local jails in the name of

<sup>2</sup> To learn more about alternatives to carceral feminism, see [transformharm.org](http://transformharm.org), or write to us and we’ll try to send you some articles.

## LAY OF THE LAND: AN ABOLITIONIST STANDPOINT | Continued from page 3

mental health and substance use treatment. In Detroit, Toledo, Atlanta, and other cities across the country, cops and politicians have tried to appropriate hundreds of millions of dollars to build shiny new jails. They tell the public that the “services” would include “humane” treatment for people with mental health or substance use issues. Reformists may fall for these false and hypocritical narratives. But abolitionists, people with mental health and substance use issues, and their advocates step up to say no, not in our name. More than anyone, vulnerable people in crisis should not be locked up in cages where they are almost invariably subject to abuse, neglect, and death.

For a third example, look at the way children and youth are treated by the state. In April 2020—a month before cops murdered George Floyd while he cried out “I can’t breathe”—Cornelius Fredericks, a 16-year-old Black boy, cried “I can’t breathe” while his “caretakers” at a youth facility in Kalamazoo smothered him to death. His crime? Throwing a sandwich in the cafeteria. But the reason he was in the facility in the first place was for the “crime” of being a motherless Black boy and “ward of the state.” Under the interlocking systems of racial capitalism, cisheteropatriarchy, and the nation-state, Cornelius and other children like him are criminalized, incarcerated, and exterminated by the same state that works to protect the white, wealthy, nuclear, heteronormative family.

Just like the false narrative that restricting choke holds will keep cops from murdering people like they did George Floyd, the state and reformists called out for restrictions on the use of restraints in youth facilities. They began to question whether private, for-profit corporations could really be trusted to care for children—as if it was the for-profit status that was the problem. What they did not do was question why the state locks up and warehouses children. The children who lived at the facility with Cornelius protested his murder, and were themselves pepper sprayed.

We say fuck that shit. We say communities can do better, we can do better. We stand for abolition.



Now, it’s important to acknowledge that the categories we’re talking about are not always totally clear or self-evident. It’s not always easy to distinguish between non-reformist and reformist reforms or to understand how a specific proposal relates to abolition as a political horizon. Lines can be blurry, and there’s often no clear answer in the moment. Our analysis of a particular program can change as circumstances on the ground or political realities shift—or in dialogue with comrades inside and outside the prison walls. Abolition can feel very far away, and the steps to get there feel messy or unclear. We make the best decisions we know how and learn from experience, from putting our principles into practice.

Also, it’s not as if we all came out of the womb as perfect abolitionists, yelling “No more cages!” Each of us in MAPS came to abolition over time. As a group, we draw from many different political genealogies: Some of us came to abolition through learning about state repression against movements for Black liberation, and through supporting political prisoners and prisoners of war who were caught up during the heyday of COINTELPRO: Sundiata Acoli, Russell “Maroon” Shoatz, Mumia Abu-Jamal, Leonard Peltier, and Marilyn Buck. Some of us came to prison abolition after seeing the “War on Drugs” play out in cities like Detroit, Flint, and Benton Harbor; the “War on Terror” on Muslim, Arab, and Southeast Asian people in communities like Dearborn; and the war on poor children and parents waged in the foster and juvenile justice systems. Some of us have organized against police killings in Michigan and beyond, or have seen other social movements be crushed by police repression. Some of us have family and friends in prison, or have volunteered inside, solidifying our commitment to abolition. Some of us draw political lessons from the life and struggle for self-determination by the EZLN in Chiapas, Mexico, as well as other indigenous struggles for freedom in occupied Hawai’i, Samoa, the Philippines, Palestine, Canada, and the US. Some of us came to prison abolition through organizing against US deportation machines. Some of us came to abolition through organizing in support of anarchists and environmentalists targeted by the federal government in the Green Scare of the 2000s. Some of us used to ascribe to some of the reformist, carceral feminist ideas around intimate partner violence, until we learned about their material harms. Some of us were activated by the writing and theorizing of trans and queer prisoners like Michael Kimble, Marius Mason, Kuwasi Balagoon, Miss Major Griffin-Gracy, Stevie Wilson, and CeCe McDonald.

## LAY OF THE LAND: AN ABOLITIONIST STANDPOINT | Continued from page 4

Prison and police abolition is obviously one of our most important principles at MAPS, but there are others that guide us. We want to share a few more with you because they also influence what projects and actions we take on, with whom we'll collaborate, and how. For example, we at MAPS share commitments to:

- opposing and ending white supremacy, racism, and essentialist ideas about race;
- opposing and ending neo-colonial appropriation of lands, resources, and life;
- opposing and ending imperialist strategies around the world that destroy entire generations and lands;
- opposing and ending capitalism as a political-social-economic system that values profit over people;
- opposing and ending the nation-state borders that wreck families and prop up all of the above;
- opposing and ending heteropatriarchy and transphobia, and bioessentialist ideas about gender and sex;
- access to healthcare for all, including full reproductive rights;
- supporting freedom for Palestine, and self-determination for all peoples;
- a transformative justice response to interpersonal harm, including gender and intimate partner violence.

This is not an exhaustive list, just a few of the common threads that we at MAPS can trust with each other, and that we can't always trust with members of some other groups. As we said at the beginning, though, we don't have to agree entirely with everyone we work with. If you disagree with us on one of these important principles, we can still dialogue and maybe even collaborate. More on that in the next section. But we admit that we are unlikely as a group to compromise these core principles.

### PRISONER SOLIDARITY

The second part of our name is "Prisoner Solidarity." By solidarity, we mean that we as a people have more that unites us than divides us. The histories of oppression that different groups experience are critically important to understand. At the same time, standing together against our particular as well as our common oppressors, we can go much farther than we can divided.

By prisoner solidarity, we mean that we are in common cause with imprisoned people striving for freedom.

We seek to communicate across the barriers imposed by the MDOC and to build relationships of mutual respect, collaboration, and accountability inside, outside, and between the two. Accountability means we do not excuse or sanction anyone causing ongoing harm to others, inside or outside, and we also strive to never treat anyone as merely expendable. Prisoner solidarity can be blurry and messy sometimes too. For example, a person in prison might reach out to us asking for something that conflicts with our principles and commitments, like those we mentioned above. We might have to say no, we won't do that. In some cases, we might be able to offer an alternative, or suggest another organization.

On the other hand, most of us in MAPS (at this time) have not been locked in prison, and can't know the lived experience of that. We need and want to learn and grow from and with those of you inside and outside the artificial walls between us. We work with an openness to people growing, changing, learning, and developing or sharpening a political analysis maybe they didn't have before—including us at MAPS. After all, that's kind of what [The Opening Statement](#) is all about. Mutual political education. Prisoner solidarity.

Some groups have a similar philosophy to ours. For example, Oakland Abolition and Solidarity has as one of their 11 points of unity: "We offer critical support, not servitude. We retain our own principles, judgment, and decision-making power. This is mutual political development. We are comrades in a struggle that grows and evolves on both sides of the wall." But some reformists set themselves in an entirely different relationship to imprisoned people. They may endorse a narrative of rehabilitation that we think is patronizing, infantilizing, and in many instances harmful to imprisoned people. They may also reinforce a brand of respectability politics that labels "good" or "model" prisoners at the expense of "bad" or "disruptive" ones.

Respectability politics have many and profound implications. Some groups make formerly imprisoned people stand up and tell a story of rehabilitation with undertones of religious redemption—how they used to do bad things, then struggled with their demons, and now (usually thanks to the group) they're ready to fly straight and give back. Basically, the same story the Parole Board expects to hear. But the narratives and the groups that demand them are incredibly patronizing (like the Parole Board), and leave the majority of people outside the circle of care and solidarity. Maybe most importantly, they reinforce the myth that imprisoned people are the ones mainly responsible for causing harm—not the countless power brokers who materially profit off of other peoples' suffering, while exactly no one expects them to be held accountable.

For a more subtle example, reformists often work in the mode of “humanizing prisoners in the eyes of the public” and calling for “humane treatment.” On the surface of it, who would argue with that? But what this discourse obscures is that a society that cages more people than ever before in the history of the planet, as a direct consequence of racial capitalism, slavery, and genocide, is itself sick and inhuman. This system and its perpetrators and jailers are the ones who need to regain their humanity—by abolishing prisons—not the people who are encaged. Who gets to decide who is human and who is not? To treat people “humanely” is to treat them “as if human.” This is just a sleight of hand that slyly tries to keep in question whether imprisoned people are actually human or not. We seek to abolish this question, along with the prisons.

For a more concrete example, when over 200 people were sent to the hole in the wake of the incident at Kinross in 2016, very few reformist groups were interested in connecting with them or speaking out publicly against the state’s abusive retaliatory actions. To those groups, it didn’t seem to matter that the majority denied involvement and all had been subjected to varied and unnecessary suffering; they still didn’t want to be remotely associated with the incident. At MAPS, by contrast, we didn’t mind if some or all of the people were involved. We understood that the root motivations behind the incident were just, and that the state’s violent retaliatory actions were wrong no matter what. We stood in solidarity with imprisoned people in material ways, and spoke out publicly against MDOC’s retaliatory actions. We believe this made a difference, both to those impacted inside and to public perceptions.

Why were so few groups willing to stand up against one of MDOC’s most obvious incidents of repression? It wasn’t only because of kneejerk respectability politics—that is, that only certain, well-behaved, cooperative imprisoned people deserve support. They were also afraid.

Some groups conduct their advocacy for imprisoned people by working directly with MDOC staff and state legislators. They have a “seat at the table” that they believe gives them the best opportunity to make change. They are state sanctioned, in the language of our diagram above. Speaking out publicly against the MDOC could lose them that coveted seat. That could lose them not only the influence they believe they have, but also their main strategy and reason for existing as a group.

There are material reasons for them to be afraid too. Many reformist groups are incorporated non-profit organizations. This allows them to receive tax-deductible donations and makes them eligible for many

other funding streams, such as grants from foundations, corporations, or local, state, and federal agencies. They depend on these grantors for their salaries, operating budgets, office rent, and to keep their lights and phones turned on.

Once committed to this model, and dependent on these grantors, non-profit groups may find themselves compromised when it comes to addressing certain issues, or speaking publicly in certain ways, that might offend their more conservative grantors. The Non-Profit Industrial Complex (NPIC)—an allusion to the Military Industrial Complex and the Prison Industrial Complex—suffers from this basic dilemma across all social justice issues. The NPIC depends so heavily on grantors that some groups tend to perpetuate, not solve, the problems they rely on for their existence and careers. We’ve included an article by Ruth Wilson Gilmore, “In the Shadow of the Shadow State,” in this issue of [The Opening Statement](#) for more on the history of the NPIC.

MAPS prefers *not* to have a seat at the table because we would rather publicly confront the state and MDOC than privately work with them. We prefer *not* to be a non-profit because we would rather call our own shots about how to be in solidarity with imprisoned people, instead of being hamstrung by the fear of losing grants. We don’t want that to be even a remote consideration for us. We also don’t want to spend half our time applying for those grants. We prefer not to have staff or salaries, which can lead to such entanglements. Instead, we all donate our time. Our capabilities are those that we and our local, regional, and national networks can provide. We’ve got skills, but not all skills! For example, we currently have no capability to provide legal help.

We believe there can be complementarity in many cases, when groups with different kinds of resources and capacities work together towards common goals, even if those goals are limited or contingent. For example, we know when to suggest other groups that might be better able to meet someone’s particular need.

Obviously, there are advantages and disadvantages to any organizational model. Who wouldn’t want to have the kind of financial resources that many non-profits have? But in our minds, there’s no question that the advantages of holding down the lower left corner of the map far outweigh any disadvantages. We have the flexibility and freedom to respond to needs from an abolitionist standpoint. We do abolition, not reform.

Michigan Abolition. Prisoner Solidarity. There you have it.

Reprinted from *The Revolution Will Not be Funded* (edited by INCITE! Women of Color Against Violence. Boston: South End Press, 2009).

*Organized philanthropy is playing a significant role in this age of tottering social standards, crumbling religious sanctions, perverse race attitudes, and selfish and ulterior motives.*—Ira De A. Reid, 1944<sup>1</sup>

Even in today's world, Ira Reid's words still ring true, descriptive of a scenario many contemporary social justice activists think is unique to our times. Yet, more than 60 years ago the dimensions of organized philanthropy's "significant role" in the African American community prompted Reid to write an incisive analysis in which he noted two things. First, during a period of about 20 years, both reformist and radical Black groups had become increasingly dependent on foundation gifts over membership dues. Second, both donors and recipients acted on assumptions about each other and about the possibility for social change which, regardless of intent, reinforced the very structures groups had self-organized to dismantle.<sup>2</sup> These two obstacles—dependency and accommodation—did not destroy the US mid-century freedom movement; activists took down US apartheid in its legal form. Freedom was not a gift, even if donations advanced the work for freedom. Our challenge is to understand these paradoxes in the early 21st century, at a time when the US-led forces of empire, imprisonment, and inequality have even seized the word "freedom," using the term's lively resonance to obscure the murderous effects of

their global military, political, and economic crusade.

Is there a non-profit industrial complex (NPIC)? How did it come into being? How is it powerful? In this essay I will work through these questions rather generally (one might say theoretically) and then illustrate how the mid-20th-century history is complicated in ways we can emulate, if not duplicate. And finally, I will offer a few suggestions about how organizations might think about funders, and about themselves. Other contributors to this volume will amplify specific instances and opportunities that current grassroots activists can use to strengthen and liberate our work, such that we are able to achieve non-reformist reforms on the road to liberation.

## THE NON-PROFIT INDUSTRIAL COMPLEX

During the past decade or so, radical thinkers have done a few turns on the term "military industrial complex." Mike Davis's "prison industrial complex"<sup>3</sup> was the first to gain wide use, in part because of the groundbreaking 1998 conference and strategy session *Critical Resistance: Beyond the Prison Industrial Complex*. It is useful to briefly consider what these "industrial complexes" consist of, and why they matter, by going back to President Dwight D. Eisenhower's 1961 farewell address to the nation, in which he introduced the concept "military industrial complex." He warned that the wide-scale and intricate connection between the military and the warfare industry would determine the course of economic development and political decision-making for the country, to the detriment of all other



1 Ira De A. Reid, "Philanthropy and Minorities," *Phylon* 5, no. 3 (1944): 266.

2 *Ibid.*

3 Mike Davis, "Hell's Factories in the Fields," *Nation*, January 1995, 32-37.

sectors and ideas. His critique seems radical when we remember he was a retired general, an anticommunist (speaking at the height of the Cold War), and an unabashed advocate of capitalism. But he spoke against many powerful tides. As a matter of fact, the United States has never had an industrial policy divorced from its military adventures (from the Revolutionary War forward), and the technical ability to mass-produce many consumer products, from guns to shoes, was initially worked out under lucrative contracts to the US military. However, in the buildup to World War II, and the establishment of the Pentagon in its aftermath, the production, delivery, and training for the use of weapons of mass destruction reconfigured the US intellectual and material landscape through the establishment of military bases, secure weapons research facilities, standing armed forces, military contractors, elected and appointed personnel, academic researchers (in science, languages, and area studies especially), pundits, massive infrastructural development (for example interstate highways), and so forth. Many taken-for-granted technologies, from the internet to Tang-brand powdered citrus drink, were developed under the aegis of national security. The electoral and economic rise of the southern and western states (the “Sunbelt”) ascended via the movement of people and money to those regions to carry out the permanent expansion and perfection of killing people on an industrial scale. In other words, without the military industrial complex, presidents Nixon, Carter, Reagan, Bush I, Clinton, and Bush II would never have achieved the White House.

When activists started to use the term “prison industrial complex”

they intended to say as much about the intricate connections reshaping the US landscape as were suggested by the term “military industrial complex.” From “tough on communism” to “tough on crime,” the consistency between the two complexes lies in how broadly their reach has compromised all sorts of alternative futures. The main point here is not that a few corporations call the shots—they don’t—rather an entire realm of social policy and social investment is hostage to the development and perfection of means of mass punishment—from prison to post-release conditions implicating a wide range of people and places. Some critics of this analytic framework find it weak because the dollar amount that circulates through the prison industrial complex is not “big” enough to set a broader economic agenda. The criticism is wrong in two different ways: first, the point of the term “prison industrial complex” is to highlight the devastating effect of industrialized punishment that has hidden, noneconomic as well as measurable dollar costs to governments and households; and second, the term’s purpose is to show how a social policy based in coercion and endless punishment destroys communities where prisoners come from and communities where prisons are built. The connection between prisons and the military is both a not-surprising material one (some military firms have become vendors to prison systems, though most beneficiaries of prison and jail spending are individual wage earners—including retired military) and a not-surprising ideological or cultural one—the broad normalization of the belief that the key to safety is aggression.<sup>4</sup>

How does “non-profit industrial complex” fit into the picture? Both

the military and the prison industrial complex have reshaped the national landscape and consequently shifted people’s understanding of themselves in the world—because norms change along with forms. Both the military and prison industrial complexes have led and followed other changes. Let’s look at the state’s role in these complexes. Importantly, part of the work the aggression agencies do is serve as the principal form of legitimacy for the intrigues of people who want to gain or keep state power these days. Why would they even need such cover? They and their ideologues have triumphed in promoting and imposing a view that certain capacities of the state are obstacles to development, and thus should be shrunken or otherwise debilitated from playing a central role in everyday economic and social life. But their actions are contrary to their rhetoric. Strangely, then, we are faced with the ascendance of antistate state actors: people and parties who gain state power by denouncing state power. Once they have achieved an elected or appointed position in government they have to make what they do seem transparently legitimate, and if budgets are any indication, they spend a lot of money even as they claim they’re “shrinking government.” Prison, policing, courts, and the military enjoy such legitimacy, and nowadays it seems to many observers as though there was never a time things were different. Thus normalization slips into naturalization, and people imagine that locking folks in cages or bombing civilians or sending generation after generation off to kill somebody else’s children is all part of “human nature.” But, like human nature, everything has a history, and the antistate state actors have followed a peculiar trajectory to their current locations.

<sup>4</sup> See Ruth Wilson Gilmore, “Fatal Couplings of Power and Difference: Notes on Racism and Geography,” *The Professional Geographer* 54, no. 1 (2002): 15-24; Orner Bartov, *Murder in Our Midst: The Holocaust, Industrial Killing, and Representation* (New York and Oxford: Oxford University Press, 1996).





During the past 40 years or so, as the Sunbelt secured political domination over the rest of the US, capitalists of all kinds successfully gained relief from paying heavily into the New Deal/Great Society social wage via taxes on profits. (The “social wage” is another name for tax receipts.) At the same time, they have squeezed workers’ pay packets, keeping individual wages for all US workers pretty much flat since 1973, excluding a blip in the late 1990s that did not trickle down to the lowest wage workers but raised higher level salaries. These capitalists and their apologists hid the double squeeze behind their effective rhetorical use of issues such as civil rights and affirmative action to invoke in the late 1960s and after the “wages of whiteness”—which any attentive person should have figured wouldn’t pay any better than they did at the close of Reconstruction a hundred years earlier.<sup>5</sup> While even white workers did not gain wage increases, the general southern strategy paid off, bringing Nixon to the White House, and bringing “the government”—the weak social welfare state—under

suspicion. From then until now, the agenda for capitalists and relatively autonomous state actors has been to restructure state agencies that had been designed under the enormous emergency of the Great Depression (the New Deal) and its aftermath (loosely, the Great Society) to promote the general welfare.

While neoconservatives and neoliberals diverge in their political ideals, they share certain convictions about the narrow legitimacy of the public sector in the conduct of everyday life, despite the US constitutional admonition that the government should “promote the general welfare.” For them, wide-scale protections from calamity and opportunities for advancement should not be a public good centrally organized to benefit everyone who is eligible. Antistate state actors come from both camps, and insist that the withdrawal of the state from certain areas of social welfare provision will enhance rather than destroy the lives of those abandoned. Lapsed New Deal Democrat Patrick Moynihan called it “benign neglect,” while

Reagan heir George H. W. Bush called it “a thousand points of light.” In this view, the first line of defense is the market, which solves most problems efficiently, and because the market is unfettered, fairness results from universal access to the same (“perfect”) information individuals, households, and firms use to make self-interested decisions. And where the market fails, the voluntary, non-profit sector can pick up any stray pieces because the extent to which extra economic values (such as kindness or generosity or decency) come into play is the extent to which abandonment produces its own socially strengthening rewards. That’s their ideal: a frightening willingness to engage in human sacrifice while calling it something else.

In fact, for so large and varied a society as the United States, abandonment is far too complicated for any single ideologue, party, or election cycle to achieve; experience shows abandonment takes a long time and produces new agencies and structures that replace, supplement, or even duplicate old institutions. Many factors contribute to this complexity. One is that large-scale public bureaucracies are hard to take down completely, due to a combination of their’ initiative and inertia; another is the fear that a sudden and complete suspension of certain kinds of social goods will provoke uprisings and other responses that, while ultimately controllable, come at a political cost. Here’s where non-profits enter the current political economy.

As a “third sector” (neither state nor business), non-profits have existed in what’s now the US since the mid-17th century, when colonial Harvard College was incorporated. Today there are nearly 2 million

5 W. E. B. DuBois, *Black Reconstruction in America, 1860-1880* (1935; repr., New York: Atheneum, 1992); David Roediger, *The Wages of Whiteness* (New York: Verso, 1991).

non-profits in the US, including, along with educational institutions, hospitals, schools, museums, operas, think tanks, foundations, and, at the bottom, some grassroots organizations. While the role of some of these organizations has not changed significantly, we have seen increased responsibility on the part of non-profits to deliver direct services to those in need of them. What also distinguishes the expansion of social-service non-profits is that increasingly their role is to take responsibility for persons who are in the throes of abandonment rather than responsibility for persons progressing toward full incorporation into the body politic.

Jennifer Wolch developed the term “shadow state” to describe the contemporary rise of the voluntary sector that is involved in direct social services previously provided by wholly public New Deal/Great Society agencies.<sup>6</sup> Legislatures and executive branches transformed bureaucracies basically into policing bodies, whose role became to oversee service provision rather than to provide it themselves. This abandonment provoked a response among organizations that advocated on behalf of certain categories of state clients: the elderly, mothers, children, and so forth.<sup>7</sup> It also encouraged the formation of new groups that, lacking an advocacy past, were designed solely to get

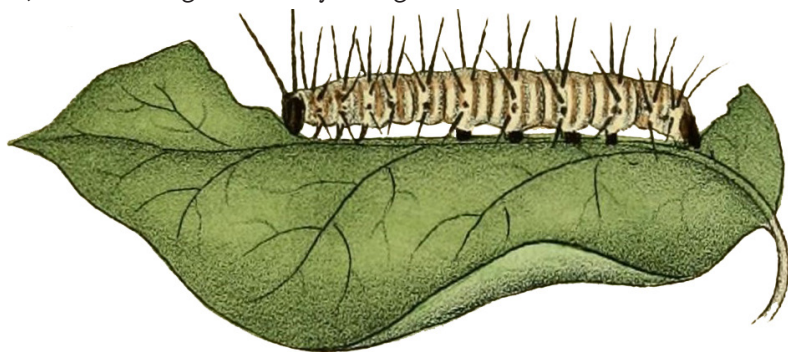
contracts and the jobs that came with them. To do business with the state, the organizations had to be formally incorporated, so they became non-profits. Thus, for different reasons, non-profits stepped up to fill a service void.

The expansion of non-profit activities structurally linked to public social services was not new, nor could it be said that when public services were on the rise the voluntary sector stayed home. To the contrary, for more than 100 years the relationship between public and voluntary had been a fairly tight one.<sup>8</sup> But for Wolch, the shadow state’s specific provenance is the resolution of two historical waves: the unprecedented expansion of government agencies and services (1933-1973), followed by an equally wide-scale attempt to undo many of those programs at all levels—federal, state, county, local.<sup>9</sup>

Antistate state actors welcomed non-profits under the rhetoric of efficiency (read: meager budgets) and accountability (read: contracts could be pulled if anybody stepped out of line). As a result of these and other pressures, non-profits providing direct services have become highly professionalized by their relationship with the state. They have had to conform to public rules governing public money, and have found that being fiduciary agents in some ways trumps their

principal desire to comfort and assist those abandoned to their care. They do not want to lose the contracts to provide services because they truly care about clients who otherwise would have nowhere to go; thus they have been sucked into the world of non-profit providers, which, like all worlds, has its own jargon, limits (determined by bid and budget cycles, and legislative trends), and both formal as well as informal hierarchies. And, generally, the issues they are paid to address have been narrowed to program-specific categories and remedies which make staff—who often have a great understanding of the scale and scope of both individual clients’ and the needs of society at large—become in their everyday practice technocrats through imposed specialization.<sup>10</sup> The shadow state, then, is real but without significant political clout, forbidden by law to advocate for systemic change, and bound by public rules and non-profit charters to stick to its mission or get out of business and suffer legal consequences if it strays along the way.

The dramatic proliferation of non-profits in the 1980s and after also produced a flurry of experts to advise on the creation and management of non-profits and the relationship of public agencies to non-profits, further professionalizing the sector. High-profile professors of management, such as Peter F.



6 Jennifer Wolch, *The Shadow State: Government and the Voluntary Sector in Transition* (New York: The Foundation Center, 1990).

7 For a thorough analysis of the politics of health see Jenna M. Loyd, “Freedom’s Body: Radical Health Activism in Los Angeles, 1963-1978” (Ph.D. dissertation, University of California, Berkeley, 2005).

8 See Reid, “Philanthropy and Minorities.” See also Jennifer Klein, *For All These Rights: Business, Labor, and the Shaping of America’s Public-Private Welfare State* (Princeton, NJ: Princeton University Press, 2003).

9 For a sense of the global dimension of this growth see Lester M. Salamon, “The Rise of the Nonprofit Sector,” *Foreign Affairs* 73, no. 4 (1994): 109-122.

10 Robert W. Lake, “Structural Constraints and Pluralist Contradictions in Hazardous Waste Regulation,” *Environment and Planning A* 24 (2002): 663-681; Robert W. Lake, “Negotiating Local Autonomy,” *Professional Geographer* 13, no. 5 (1994): 423-442.

Drucker, wrote books on the topic, and business schools developed entire curricula devoted to training the non-profit manager.<sup>11</sup> As had long been the case, every kind of non-profit from the largest (hospitals and higher-education establishments) to the smallest sought out income sources other than public grants and contracts, and “organized philanthropy” provided the promise of some independence from the rule-laden and politically erratic public-funding stream for those involved in social welfare activity.

While we bear in mind that foundations are repositories of twice-stolen wealth—(a) profit sheltered from (b) taxes—that can be retrieved by those who stole it at the opera or the museum, at Harvard or a fine medical facility,<sup>12</sup> it is also true that major foundations have put some resources into different kinds of community projects, and some program officers have brought to their portfolios profound critiques of the status quo and a sense of their own dollar-driven, though board-limited, creative potential. At the same time, the transfer to the baby boomer generation (those born between 1946 and 1964) of what by the year 2035 will be trillions of dollars of inherited wealth began to open the possibility for more varied types of funding schemes that non-profits might turn to good use as some boomer heirs seek specifically to remedy the stark changes described in these pages.<sup>13</sup> Such initiatives and events encouraged grassroots social justice organizations that otherwise might

have continued their work below the Internal Revenue Service and formal-funding radar to incorporate as non-profits to make what they have consistently hoped to be great leaps forward in social justice.<sup>14</sup> In other cases, unincorporated grassroots groups receiving money under the shelter of existing non-profits have been compelled to formalize their status because auditors have decided that the non-profits who sponsor them have strayed outside the limits defined by their mission statements.

The grassroots groups that have formally joined the third sector are in the shadow of the shadow state. They are not direct service providers but often work with the clients of such organizations as well as with the providers themselves. They generally are not recipients of public funds although occasionally they get government contracts to do work in jails or shelters or other institutions. They have detailed political programs and deep social and economic critiques. Their leadership is well educated in the ways of the world, whatever their level of formal schooling, and they try to pay some staff to promote and proliferate the organization’s analysis and activity even if most participants in the group are unpaid volunteers. The government is often the object of their advocacy and their antagonisms—whether because the antistate state is the source of trouble or the locus for remedy. But the real focus of their energies is ordinary people whom they wish fervently to organize against their own abandonment.

The “non-profit industrial complex” describes all of the dense and intricate connections enumerated in the last few paragraphs, and suggests, as is the case with the military industrial complex and the prison industrial complex, that something is amiss. What’s wrong is not simply the economic dependencies fostered by this peculiar set of relationships and interests. More important, if forms do indeed shape norms, then what’s wrong is that the work people set out to accomplish is vulnerable to becoming mission impossible under the sternly specific funding rubrics and structural prohibitions that situate grassroots groups both in the third sector’s entanglements and in the shadow of the shadow state. In particular, the modest amount of money that goes to grassroots groups is mostly restricted to projects rather than core operations.<sup>15</sup> And while the activist right (which has non-profits and foundations up the wazoo) regularly attacks the few dollars that go to anti-abandonment organizations, it has loads of funds for core operations; as of the end of the last century, the Right had raised more than \$1 billion to fund *ideas*.<sup>16</sup> How core can you get? In other words, although we live in revolutionary times, in which the entire landscape of social justice is, or will shortly become, like post-Katrina New Orleans because it has been subject to the same long-term abandonment of infrastructure and other public goods, funders require grassroots organizations to act like secure suburbanites who have one last corner of the yard to plant.

11 Peter F. Drucker, *Managing the Nonprofit Organization: Principles and Practice* (New York: HarperCollins, 1990).

12 Teresa Odenthal, *America’s Wealthy and the Future of Foundations* (New York: The Foundation Center, 1987).

13 Lester M. Salamon, “The Nonprofit Sector at a Crossroads: The Case of America,” *Voluntas: International Journal of Voluntary and Nonprofit Organizations* 10, no.1 (1999): 5-23.

14 Robin Garr, *Reinvesting in America: The Grassroots Movements That Are Feeding the Hungry, Housing the Homeless, and Putting Americans Back to Work* (Reading, MA: Addison-Wesley Press, 1995). See also Ruth Wilson Gilmore, *Golden Gulag: Prisons, Crisis, Surplus, and Opposition in Globalizing California* (Berkeley: University of California Press, 2007).

15 Robert O. Bothwell, “Philanthropic Funding of Social Change and the Diminution of Progressive Policymaking,” in *Non-profit Advocacy and the Policy Process: A Seminar Series 2* (Washington, DC: The Urban Institute, 2001): 67-81.

16 David Callahan, *\$1 Billion for Ideas: Conservative Think Tanks in the 1990s* (Washington, DC: National Committee for Responsive Philanthropy, 1999).

## MICHIGAN NEWS ROUNDUP | MAPS

*This news roundup features three articles from the Detroit Free Press on MDOC's policy of making people stand in line outside to get their medications, even when it's freezing or raining. We don't usually reprint articles from mainstream news organizations in TOS, since they often make assumptions or present analyses that we fundamentally disagree with. So why include these articles here? There are four main reasons. First, it seems useful for folks inside to know that this policy is starting to get some serious attention on the outside, including the attention of legislators, and although we have little faith in them, this attention probably does put some pressure on prison officials. Legislators have apparently met with MDOC, who so far evaded accountability, and now there's talk about reforms like giving MDOC funding to (supposedly) build structures to protect med lines from rain—instead of releasing sick people so they can be cared for in the community. Second, we are interested in how widespread this policy continues to be and how it has affected you and others, despite the legal settlement in 2020 requiring them to end the practice. Feel free to send us a note to share your experiences or observations. Third, we like it when MDOC spokesperson Chris Gautz looks like a fool, and we thought you might appreciate it too. And fourth, the last article states that the first two articles were “removed from the copies of the newspaper available in the library” at two facilities. That article has a quote from Gautz basically daring us to find out more: “If you have information it was rejected by a facility in particular, let me know and I can look into it.” So let's do it! If you have information that any of these articles were removed from the copies of the Free Press in the library at the prison where you're being held, let us know. —MAPS*



## SICK PRISONERS IN MICHIGAN MUST STAND IN COLD AND RAIN TO GET THEIR MEDICATIONS | Paul Egan

Detroit Free Press

Published 6:01 a.m. ET March 26, 2023

LANSING — Sick prisoners in Michigan are routinely required to stand in line in rain and freezing temperatures to wait for their medications, in a practice medical and criminal justice experts say is both cruel and costly to taxpayers. A Free Press investigation found that outdoor medication lines are a long-standing practice at Michigan's prisons for men and also at Women's Huron Valley Correctional Facility, the only state prison for women, with no allowances made for inclement weather. Sick prisoners in Michigan are routinely required to stand in line in rain and freezing temperatures to wait for their medications, in a practice medical and criminal justice experts say is both cruel and costly to taxpayers. Michigan prisoners are not issued raincoats or umbrellas. Nor can they purchase them or have them sent by family members or friends, said Michigan Department of Corrections spokesman Chris Gautz, as both are considered security risks. “We are lined up outside in the rain, sleet, snow, etc.,” said Rebecca Smith, a prisoner at Women's Huron Valley.

Because officials are concerned about prisoners hoarding medication or selling it to others, those with many medical conditions must line up as often as three times a day to get their pills and swallow them before leaving the line. Most form lines outside “due to the number of prisoners needing medications and the physical limitations of space in our clinics,” Gautz said. Prisoners could have pills brought to their cells if recovering from surgery or too sick to get out of bed, but there are no blanket exemptions for chronic conditions such as asthma, emphysema, diabetes, or COPD (Chronic Obstructive Pulmonary Disease), Gautz said.

“It's just inhumane and unsafe,” said Dr. Marc Stern, a medical doctor, correctional health care expert, and assistant professor at the University of Washington School of Public Health.

Also, taxpayers should be unhappy about the practice, Stern said, because it is almost certainly harming prisoner health and thereby increasing prison health care costs that already amount to about \$300 million a year from the state's general fund. Heather Ann Thompson, a professor of history and African American studies at the University of Michigan and author of the Pulitzer Prize-

## SICK PRISONERS IN MICHIGAN MUST STAND IN COLD AND RAIN TO GET THEIR MEDICATIONS | Continued from page 12

winning book “Blood in the Water,” about the 1971 Attica prison uprising, said prisoners are frequently treated as if their medical needs are an imposition. “No one who is allowing this to happen in MDOC would remotely allow their own parents, siblings or children needing care to be treated this way,” Thompson said. “It is unconscionable.”

Mark White, 64, a prisoner who is diabetic and has acid reflux disease, sued the department March 14 under the Americans with Disabilities Act. He said he repeatedly had to wait in line in cold and rain to get his prescribed medications at Cotton Correctional Facility, near Jackson. White said that in December he developed a serious cold and flu from waiting outside in medication lines three times a day and later was diagnosed with COPD. Each prisoner is issued three sets of clothing, and one of his was already in the laundry when he went outside to the 6:30 a.m. medication line on Jan. 16, in near-freezing rain that would continue all day, White alleged in the federal lawsuit. His pants, shirt and coat were all completely soaked as he waited for his medicine and he changed into his last dry pants and shirt — along with his already wet coat — before venturing outside again for the 11:30 a.m. medication line, where he stood outdoors in a cold downpour for more than 30 minutes, he said. He then “sat in wet clothes for over three hours,” until his laundry was returned, according to the suit.

On Jan. 18, White requested a raincoat — which Gautz said the department sometimes issues temporarily to prisoners required to work in the rain — as an accommodation under the ADA. He said he received no response until Feb. 8, when the request was denied based on “no medical necessity.” He said he filed a grievance over that decision but his grievance was never assigned a number and he never received a response. Having to stand in line in freezing rain with COPD and other health problems violates both the ADA and constitutional protections that bar “cruel and unusual punishment,” White alleged. He has since been transferred to Carson City Correctional Facility, a move he described as retaliation for filing his lawsuit. Gautz did not respond to White’s allegations. The department routinely declines comment on pending litigation.

Though the case did not relate to waiting in line for medication, records show that in 2020 the state paid \$12,000 to settle a lawsuit brought by Edward Burley, now 59 and on parole, who alleged he caught pneumonia after he was forced to stand outside in freezing rain and then sit for two hours in a classroom with soaked clothing while a prisoner at Carson City Correctional Facility, despite health conditions that included asthma and COPD. Burley had shown up early for a class required to

qualify for parole. He said prison officials ordered him out of the school to wait until others arrived and would not let him return to his cell. Once the class started, he was not permitted to return to his cell to put on dry clothes, he alleged. The MDOC admitted no wrongdoing, but U.S. District Judge David Lawson, who appointed a lawyer for Burley, said in a 2017 opinion that constitutional case law supports Burley’s position that “forcing his exposure to cold, wet conditions over an extended period would amount to cruel and unusual punishment,” if prison officials acted with “deliberate indifference.”

Gautz said he rejects the idea that because someone takes medicine, it automatically means they have conditions that could be worsened by standing outside. At most facilities, prisoners are protected from the elements once they reach the pill window, and officials try to keep the lines moving after calling prisoners out based on what unit they live in, he said. “When they go to med line, they are typically already outside on their own in the yard or doing something else, so being called to the med line is not what caused them to be outside,” Gautz said. Still, he conceded the earliest medication line of the day is 6:30 a.m., when most prisoners are not outside, and that prisoners do not normally go outside voluntarily when it is raining. Umbrellas are banned because they could be used as weapons. Raincoats are prohibited because the material they are made of could help prisoners escape through specially equipped fences, Gautz said.

Adam Ellsworth, of Alma, who was a corrections officer at Bellamy Creek Correctional Facility in Ionia from 2015 to 2021, said chronic staff shortages are a major reason the department can’t deliver medication to those who need it. “Even if it was minus 5 degrees and awful out, or downpouring, prisoners are expected — and required in some cases — to make the trip,” Ellsworth said. Andrea Armstrong, a law professor at Loyola University in New Orleans who is a national expert on prison conditions, said the issue is not unique to Michigan and has also arisen in California and Alabama. The risk is not just cold and dampness, but heat, since some prescription medications make people more sensitive to hot temperatures, she said. Jeff Mellow, a professor of criminal justice at John Jay College of Criminal Justice in New York, said there is a health risk beyond the obvious effects of getting cold and wet. “Medical adherence can be a problem if prisoners decide not to take their medication because the pill line is too long or they have to wait outside in bad weather,” Mellow said.

# HIDDEN MEMO WAS SUPPOSED TO STOP MICHIGAN PRISONERS FROM LINING UP IN THE COLD AND RAIN | Paul Egan

Detroit Free Press

Published 6:02 a.m. ET April 8, 2023 Updated 9:17 a.m. ET April 8, 2023

LANSING — The Michigan Department of Corrections settled a 2020 lawsuit by directing wardens to keep prisoners from standing in freezing rain, but the memo setting out that policy change has been kept under wraps as the practice has continued. Michigan Department of Corrections Director Heidi Washington sent an April 23, 2020 “Director’s Office Memorandum” (DOM) to wardens after a federal judge ruled the department might be violating constitutional protections against cruel and unusual punishment. But the department denied the existence of such a DOM, both through a spokesman and in response to a Michigan Freedom of Information Act request from the Free Press. The newspaper ultimately obtained the memo from a prisoner who found it in the prison library.

The memo directs wardens to ensure prisoners are not required to wait outside when there is precipitation and the temperature is 32 degrees Fahrenheit or colder, unless the prisoner is in transit. But prisoners across Michigan say they are still regularly required to line up outside to get their medications in wet, freezing conditions, as first reported by the Free Press on March 26. The memo was among the terms of a lawsuit settlement the state reached with former prisoner Edward Burley, who suffered from asthma and COPD (Chronic Obstructive Pulmonary Disease) and alleged he contracted pneumonia when prison officials told him to stand outside in freezing rain after he arrived early for a class. The state also agreed to pay Burley \$12,000 and have his health evaluated by the prison medical director.

But the memo was not assigned a number or listed with the department’s other director’s office memoranda, which get posted on the department’s website, and MDOC spokesman Chris Gautz repeatedly denied it existed until the Free Press confronted him with a copy of the settlement agreement, obtained from the Michigan Attorney General’s Office. Gautz then conceded the memorandum existed, but insisted it was only a memo from the director, not a “Director’s Office Memorandum,” even after the Free Press showed him a copy of the memo, with the words “Director’s Office Memorandum,” in bold capital letters, emblazoned across the top. In 2020, MDOC Director Heidi Washington sent wardens a memo headed “Director’s Office Memorandum,” telling them not to make prisoners stand outside in freezing rain. The department confirms the memo is authentic but claims it was inaccurately labeled and did not

provide it in response to a Free Press FOIA request. “It was labeled in error,” said Gautz, a few hours after telling the Free Press: “There were no DOMs (director’s office memoranda) issued that had anything to do with prisoners standing in the rain.”

The Free Press obtained a copy of the memo from Troy attorney Brandon McNeal, who received it from his client, prisoner Mark White, who is suing the department for having to stand in freezing rain to get his medications for diabetes and acid reflux. White found the memo, which has the subject heading, “Prisoner movement in inclement weather,” in the prison library and made a copy of it. Earlier, the Free Press filed a FOIA request for all director’s office memoranda issued during the 2020 calendar year. The department responded with a list of 2020 DOMs that did not include the memo.

Gautz, whose job titles include MDOC “transparency liaison,” confirmed he knew about the inclement weather memo, and knew it had the heading “Director’s Office Memorandum,” when he told the Free Press there was no DOM related to prisoners standing in the rain. “I just want to be clear that I did not deny the memo existed,” Gautz said. “You only asked about a DOM and there was not an official DOM to give you.” Gautz said there is a defined process for issuing a new DOM and the memo about prisoners standing in the rain did not go through that process. He said he didn’t know why the memo was issued under an incorrect heading.

Burley, who is now on parole and living and working in the Flint area, said the difficulties the Free Press experienced in connection with the memo are consistent with what happened after the settlement was signed. One of the terms of the agreement was that the memo be posted in prison libraries, but Burley said he had to complain after he was transferred from Carson City Correctional Facility to Parnall Correctional Facility near Jackson and could not find the memo in the prison there. He regularly saw other prisoners required to stand in the rain in freezing temperatures after the settlement was reached, and it even happened to him again, in 2022, not long before he was paroled, he said. “They did everything they can to try to hide that from the population,” Burley said of the memo. “We build doghouses so our dogs don’t have to stand out in the rain, but they treat their prisoners less than human.”

Attorney Kimberly Scott, a principal at the Miller Canfield law firm, which represented Burley on a pro bono basis, confirmed that in the summer of 2022 she contacted the Attorney General’s Office about the memo not being posted, as promised. The department then

## HIDDEN MEMO WAS SUPPOSED TO STOP MICHIGAN PRISONERS FROM LINING UP IN THE COLD AND RAIN | Continued from page 14

sent assurances it was complying, she said. Burley's lawsuit is significant, Scott said, because it was the first time a federal judge in the 6th Circuit — which includes Michigan, Kentucky, Ohio and Tennessee — ruled that requiring prisoners to stand outdoors in inclement weather, when such exposure could worsen existing health conditions, could violate constitutional protections against cruel and unusual punishment. Because the 2017 opinion from U.S. District Judge David Lawson has not been appealed, prisoners making claims similar to those that Burley made and that White is now making can point to his opinion as a precedent to help take their own cases to trial. "It's a big deal," Scott said.

Michigan prisoners are not issued umbrellas or raincoats, as both are deemed security risks. McNeal, who represents White, said he is exploring the possibility of a class-action lawsuit. "This issue could be affecting a large number of people and they may not even know of the Burley settlement agreement and the fact the MDOC should not be allowing them to be exposed to these conditions," he said.

## MICHIGAN LAWMAKERS INVESTIGATING PRISON AGENCY'S HANDLING OF 'FREEZING RAIN' MEMO | Paul Egan

Detroit Free Press

Published 6:01 a.m. ET April 16, 2023 Updated 9:13 a.m. ET April 16, 2023

LANSING — Lawmakers from both parties say they are looking into the Michigan Department of Corrections' compliance with a legal settlement related to prisoners standing in freezing rain and whether the agency attempted to conceal a director's memorandum related to the issue. The Free Press reported April 8 that the MDOC settled a 2020 lawsuit by directing wardens to keep prisoners from standing in freezing rain, but the memo setting out that policy change has been kept under wraps as the practice has continued. The department denied the existence of the memorandum, sent to wardens by MDOC Director Heidi Washington, both in statements to the Free Press and in response to a Michigan Freedom of Information Act request. Later, after the Free Press obtained a copy of the memo through a prisoner, spokesman Chris Gautz said he was aware of the memo but did not provide it to the newspaper because he does not consider it to be a "Director's Office Memorandum," despite the fact the memo appeared under that heading, in bold capital letters. It's not clear the department complied with the terms of the settlement, which included posting a copy of the memo in all prison libraries. Attorney Kimberly Scott, a principal at the

Gautz said that most, but not all, of Michigan's 26 state prisons have outdoor medication lines, and many have a mix of indoor and outdoor lines. "When there is severe rain or snow we have facilities that adjust and either bring more of their med lines indoors, or they call half a unit at a time instead of a whole unit to lessen the number of people going at one time so the time in line is shorter and moves faster," Gautz said. He said there are 10 prisons where all medication lines are indoors. But Gautz counted Macomb Correctional Facility in the all-indoor list and a prisoner there, Temujin Kensu, pushed back. "The lines often go from inside to outside as they are so long," Kensu said in an email to the Free Press. "It seems that staff often deliberately call far too many prisoners at the same time forcing us to stand outside in rain to subzero weather," he said. Gautz declined to respond directly to Kensu's comments. "I have answered your questions about this issue," he said.

Miller Canfield law firm, confirmed that in the summer of 2022 she contacted the Attorney General's Office after the prisoner who received the settlement, Edward Burley, was transferred to another prison and found the memo was not posted in that prison's library.

State Sen. Sue Shink, D-Northfield Township, chair of the Senate Appropriations Subcommittee on Corrections, which handles funding requests for the department, "is in the process of gathering more information about this concerning situation," said Sydney Hart, Shink's chief of staff. State Sen. Rick Outman, R-Six Lakes, who is minority vice-chair of the same subcommittee, said he, too, is investigating. "This is concerning from a number of angles," Outman said. One is the way the department treats prisoners and another is whether the MDOC complies with legally binding settlements, he said. "State taxpayers shouldn't be on the hook for lawsuit settlements because the department hasn't been following their own rules." Outman said he was not impressed with the department's response to questions from the Free Press and he "was disappointed in what appeared to be numerous attempts to cover up the situation." The administration of Gov. Gretchen Whitmer "certainly hasn't been the most transparent over the last few years and unfortunately this situation seems to fall in with the same patterns we have seen," Outman said. Whitmer declined comment through her spokesman, Bobby Leddy.

# MICHIGAN LAWMAKERS INVESTIGATING PRISON AGENCY'S HANDLING OF 'FREEZING RAIN' MEMO | Continued from page 15

State Sen. Sam Singh, D-East Lansing, chairman of the Senate Oversight Committee, said he, too, was concerned when he read about the MDOC's handling of the memo, and he has reached out to the department for more information. "I want to learn more about how they're managing the legal settlement," Singh said. "There were supposed to be changes and I want to make sure they are complying with that." State Sen. Ed McBroom, R-Vulcan, minority vice-chair of the Senate Oversight Committee, said the Free Press article demonstrated the department's dishonesty and lack of transparency, which he said he has been fighting for years. "None of it is really that surprising to me," McBroom said. "I'm just glad they got caught red-handed trying to hide this memo and then the doublespeak they tried to use to say that they didn't lie to you." McBroom, who formerly chaired the oversight committee, said he has run into similar issues when trying to investigate various issues in the department. The department will change terminologies to withhold records or claim that up-to-date records are not available, he said. Then, when called out over a lack of transparency, the department will claim those asking for the records are trying to endanger department employees by releasing information that should be kept secret, he said, "which is completely untrue." Whitmer needs to show whether she truly is an advocate of government transparency, McBroom said. "It's time to walk the walk," he said. "There's been a lot of talk the talk for years."

THE OPENING STATEMENT is an abolitionist newsletter driven by the voices and visions of Michigan prisoners, as well as those on the outside impacted by the prison system. THE OPENING STATEMENT hopes to foster ongoing discussion against the violence of incarceration.

## WE WOULD LOVE TO HEAR FROM YOU.

If you would like to contribute to the ongoing discussion, please send us your thoughts to the address below (also let us know if you wish to subscribe). Because MDOC is in a phase of increased censorship at this time, we cannot promise to publish your contribution here, but we can summarize what we hear from you all in general terms. If you would like to publish a critical essay, reflection on your own experiences, poetry, or artwork and would like help finding an outside venue, let us know what audience you have in mind and we'll try to connect you with another publisher.

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Nadia El Anani, president of the Adolescent Redemptive & Restorative Program, which mainly serves prisoners who were 18 to 25 years old when they were convicted of crimes, said she is pleased lawmakers are asking questions. She said she believes prisoners were not aware of the memo's existence and has spoken to a prisoner who has worked for a lengthy time in a prison library who said he never saw the memo posted. Also, a loved one of hers who is in prison "has been made to stand outside in the rain and freezing ice storms," El Anani said. Prisoners need to be treated with humanity, she said. "They are not animals; they are not dogs."

Burley sued after he allegedly was required to stand outside in freezing rain when he showed up early for a class and then sit in the class in clothes that were cold and wet. He said he developed pneumonia. More recently, prisoner Mark White sued after he said he was required to stand in line in freezing rain to wait for his medications, despite a respiratory condition. Most Michigan prisons run at least some of their medication lines outdoors, regardless of the weather. White said both Free Press articles about prisoners having to stand outdoors in cold, wet weather were removed from the copies of the newspaper available in the library at Carson City Correctional Facility, where he is held. El Anani said she received the same report from another prisoner at a different prison. "There was not a statewide blocking of the story that Lansing sent out," Gautz said. "If you have information it was rejected by a facility in particular, let me know and I can look into it."

## HELP SPREAD THE WORD!

Do you know someone who might be interested in this publication? Please share it with them and have them write to us directly. We are not able to add someone to our subscription list without hearing from them directly.

IF YOU WOULD LIKE TO UNSUBSCRIBE, please let us know and we will remove your name immediately. We understand that people may choose to unsubscribe for any number of legitimate reasons and respect that choice, no questions asked!

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